Statement of Congressman Gerald E. Connolly (VA-11)
House Committee on Rules
May 6, 2014

Chairman Sessions, Ranking Member Slaughter, I oppose the proposed Rule under consideration on procedural and substantive grounds. The danger of approving the Rule for this misguided contempt resolution was eloquently captured by Truman Capote, who once noted that, "The problem with living outside the law is that you no longer have its protection."

The Founders certainly understood this danger, which explains why they acted with clarity and purpose to enshrine specific individual guarantees for all Americans against government abuse in our Nation's Bill of Rights.

As the Supreme Court held in the seminal *United States v. Quinn* case, which I believe is one of three foundational rulings that established the broad judicial interpretation of the Fifth Amendment that applies today:

> *The Privilege against self-incrimination is a right that was hard-earned by our forefathers. The reasons for its inclusion in the Constitution—and the necessities for its preservation—are to be found in the lessons of history. As early as 1650, remembrance of the horror of Star Chamber proceedings a decade before had firmly established the privilege in the common law of England. Transplanted to this country as part of our legal heritage, it soon made its way into various state constitutions and ultimately in 1791 into the federal Bill of Rights. The privilege, this Court has stated, "was generally regarded then, as now, as a privilege of great value, a protection to the innocent though a shelter to the guilty, and a safeguard against heedless, unfounded or tyrannical prosecutions." Co-equally with our other constitutional guarantees, the Self-Incrimination Clause "must be accorded liberal construction in favor of the right it was intended to secure."*
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> *Such liberal construction is particularly warranted in a prosecution of a witness for a refusal to answer, since the respect normally accorded the privilege is then buttressed by the presumption of innocence accorded a defendant in a criminal trial. To apply the privilege narrowly or begrudgingly—to treat it as an historical relic, at most merely to be tolerated—is to ignore its development and purpose.*

If this House majority is not careful, before we know it, we may find ourselves in a hostile environment where Star Chamber proceedings are the norm, and where any Chairman is empowered to compel any American invoking his or her Fifth Amendment rights to appear before a Committee for no other reason than to be pilloried, embarrassed, and harassed into unknowingly, or unintentionally, forfeiting the very constitutional rights that our Founders established to protect every citizen against forced self-incrimination by the government.

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While it may not be intentional, the unfortunate reality is that by pursuing this contempt resolution all the way to the House floor, the Majority may inadvertently usher in a return to the abusive tactics of the 1950s, when a red-baiting Senator Joseph McCarthy tried – and failed – to obtain a criminal conviction of an American citizen named Diantha Hoag. In fact, the famous *United States v. Hoag* case raised nearly identical legal questions to the ones we are facing today.

Like Ms. Lerner, Ms. Hoag repeatedly professed her innocence, unequivocally stating, "I have never engaged in espionage nor sabotage. I am not so engaged. I will not so engage in the future. I am not a spy nor a saboteur." Similar to the situation today, Senator McCarthy attempted to argue that Ms. Hoag's statement constituted a waiver of her Fifth Amendment rights, stating, "when the witness says she never engaged in espionage, then she waived the Fifth Amendment, not merely as to that question, but the entire field of espionage."

However, when Senator McCarthy held the witness in contempt and sought a criminal prosecution, the United States District Court for the District of Columbia held in the landmark 1956 *United States v. Hoag* decision that, "the defendant did not waive her privilege under the Fifth Amendment," and that she was, "entitled to a judgment of acquittal on all counts."

One need only review long-standing, broad judicial interpretations of the Fifth Amendment's privilege against self-incrimination to understand that as the Second Circuit Court of Appeals found in *Klein v. Harris*, a waiver of this privilege must not be "lightly inferred" and that "every reasonable presumption against finding waiver" should be exercised. Indeed, as noted in the seminal *Quinn v. United States* ruling, the Supreme Court has held that the Fifth Amendment is, "a privilege of great value, a protection to the innocent though a shelter to the guilty, and a safeguard against heedless, unfounded or tyrannical prosecutions."

The bottom line is that with respect to the question before us today – does a general assertion of innocence by an American who clearly states the intention to invoke, subsequently invokes, and *never* waivers from invoking the Fifth Amendment privilege against self-incrimination – constitute "unequivocally and intelligently" waiving said privilege? Our Nation's Judicial Branch has repeatedly and clearly provided the answer: no.

Therefore, I urge all Members to oppose the Rule.

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